IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 1952 of 2005(G)

PETITIONERS:

1. **YOHANNAN KUNJU KUNJU, VETTIPUZHA VEEDU, VILAKKUVETTOM MURI, VALAKKODU VILLAGE, PUTHANAPURAM TALUK.**
2. **GRASSY JOHN, VETTIPUZHA VEEDU, NELLIPPALLY MURI --DO--.**
3. **JOSEPH, KAMUKINTHARA VEEDU, ---DO--.**
4. **ANNAMMA, W/O.JOSEPH, KOITHARA VEEDU --DO--.**
5. **ELSAMMA SEBASTIAN, VADAKARA PUTHEN VEEDU KINDAGARA, CHANGANASSERY TALUK.**
6. **ANTONY @ TONY, KOITHARA VEEDU, VILAKKUVETTOM MURI, VALAKKODU VILLAGE, PUTHANAPURAM TALUK.**

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS:

1. **ROSAMMA JOSEPH, SARAMBIKALAYA KIZHAKKEPURATH VEEDU, VILAKKUVETTOM MURI, VALAKKODU VILLAGE, PUTHANAPURAM TALUK,**
2. **GEORGEKUTTY, ---DO--.**
3. **TOM JOSEPH, KIZHAKKEPURATH VEEDU, VIL;AKKUVETTOM MURI, VALAKKODU VILLAGE, PUTHANAPURAM TALUK.**

BY ADV. SRI.KRB.KAIMAL
SRI.V.D.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 1952/2005 G

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE DEATH CERTIFICATE OF SUJI SAMUEL DT. 22/10/04.

EXT.P2. COPY OF THE APPLICATION TO CONDONE DELAY, IA NO. 1601/04 IN OS NO. 57/98, on the FILES OF THE MUNSIFF'S COURT, PUNALUR DT. 24/09/04.

EXT.P3. COPY OF THE APPLICATION TO SENT ASIDE THE EXPARTE DECREE, IA NO. 1602/04 IN OS NO. 57/98 OF MUNSIFF COURT, PUNALUR DT. 24/09/04.

EXT.P4. COPY OF THE EXECUTION PETITION, EP NO. 102/04, IN OS NO. 57/98 BEFORE THE MUNSIFF COURT, PUNALUR DT. 10/09/04.

EX.T.P5. COPY OF THE ORDER DT. 12/1/05 IN IA NO. 1601/2004 IN OS NO. 57/98 OF MUNSIFF COURT, PUNALUR.

EXT.P6. COPY OF THE ORDER IN IA NO. 1602/04 OF MUNSIFF'S COURT, PUNALUR.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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KURIAN JOSEPH J.

W.P.(C) No.1952 of 2005

Dated 9th August, 2007.

J U D G M E N T

Petitioners are aggrieved since their application under Order IX Rule 13 of the Code of Civil Procedure was dismissed. True, it is in view of the delay in filing the restoration petition. But the fact remains that the petitioners have a statutory remedy under Order 43 Rule 1(d) of the Code and hence it is not necessary for this Court to invoke its supervisory jurisdiction under Article 227 of the Constitution of India. Therefore, without prejudice to such liberty to the petitioners, and making it clear that in the event of the petitioners pursuing the said remedy, the time taken by them for prosecuting this writ petition shall stand excluded while computing the period of limitation, this writ petition is dismissed.

KURIAN JOSEPH, JUDGE.

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